

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

GORDON FRANKLIN, JR.,)	
)	
Petitioner,)	
)	
vs.)	Nos. 10-3313-CV-S-BCW-H
)	and 10-3348-CV-S-BCW-H
LINDA SANDERS, Warden, ¹)	
United States Medical Center for)	
Federal Prisoners,)	
)	
Respondent.)	

**REPORT AND RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

Petitioner, an inmate confined at the United States Medical Center for Federal Prisoners, has petitioned this Court for a writ of habeas corpus. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner is entitled to no relief, it will be recommended that leave to proceed in forma pauperis be denied. Additionally, because the parties are identical and the issues are similar, these matters will be consolidated.

As grounds for relief in habeas corpus, the petitioner asserts that because he is a civil detainee and it is unconstitutional for him to be housed in the Bureau of Prisons with criminal defendants; that he is denied the right to use tobacco products, and denied the right to correspond with “Miss Marie Saavedra.”

Petitioner has failed to allege a constitutional violation. He is committed to the custody of the Attorney General pursuant to the provisions of 18 U.S.C. § 4246. That section specifically allows inmates to be housed in a suitable facility, and the mere fact that a facility is run by the

¹ The current warden is the proper respondent.

Bureau of Prisons which contains criminal detainees does not mean it is not a suitable facility. In addition, the law is clear that there is no constitutional right to use tobacco while confined. Finally, there is nothing to support plaintiff's allegation that his correspondence is being unconstitutionally limited. He states that his First Amendment rights have been violated due to an "Officer Rambo" telling him to discontinue writing letters to Miss Saavedra. In its response to the Order to Show Cause in Case No. 10-3348, the United States points out there is no officer at the United States Medical Center for Federal Prisoners by the name of "Rambo", and there is no other documented restrictions on the petitioner's ability to write letters.²

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petitions herein for writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND
UNITED STATES MAGISTRATE JUDGE

Date: September 13, 2012

² Petitioner has failed to exhaust administrative remedies, however, because there is no constitutional violation, that will not form the basis for the denial of relief.